IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.514 of 2007
ORIENTAL INSURANCE COMPANY THRU.RAKESH KUMAR
Versus
THE STATE OF BIHAR & ANR
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4 04.9.2008. Heard learned counsel for the parties.

2 The petitioner, Oriental Insurance Company Limited, which is a Govt. owned company, has filed the instant writ petition for setting aside order dated 16.12.2006, passed by the Mobile Lok Adalat accepting the Final Form fallaciously holding that there was no objection to it.

3 Before this court takes up the issue for determination it would be necessary to mention the facts of the case in brief.

4. Respondent no.2 purchased a new Tata Spacio vehicle and got it insured with the aforesaid Insurance company. On 23.12.2002 when his driver was returning from Gaya with this vehicle, Maruti borne miscreants overpowered him, pulled him out of the vehicle and made him unconscious, by administering liquid intoxicant and escaped with the vehicle. When the driver of the vehicle gained consciousness, he intimated the matter to respondent no.2 and at his instruction lodged a written report with police, giving rise to Bodh Gaya PS case no. 147 of 2002 was registered under sections 364 and 379 I.P.C.

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5. Police after investigation submitted Final form finding the incident to be true but without clue. The Final form was accepted by the Chief Judicial Magistrate, Gaya on 23.3.2004.

6. The petitioner company being aggrieved moved the Sessions judge, Gaya, in Revision, being Cr Rev No. 35 of 2004/52 of 2004. On

13.12.2004 learned Addl. Sessions Judge, Gaya set aside order of the Chief Judicial Magistrate, Gaya dated 23.3.2004 and remitted the matter for fresh consideration after hearing the parties. On 18.1.2006 police submitted similar final form, as was submitted earlier, and the learned magistrate vide order dated 18.1.2006 accepted the same, little realizing that he had to decide the matter after due hearing, as directed by the revisional court on 22.3.2006. The Chief Judicial Magistrate, Gaya, realizing the mistake directed the police to file suppl final form. The case was being adjourned awaiting filing of suppl Final form. In the meantime, on 16.12.2006 the aforesaid case was placed before the leaned mobile Lok Adalat. The Mobile Lok Adalat vide order dated 16.12.2006, accepted the final form, observing that the informant/driver of insured vehicle did not raise any objection to the same. The petitioner company submits that respondent no.2 the owner of the vehicle received a claim for loss of the vehicle from it, for theft, and as such the Company was the most affected party.

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7. Learned counsel for the petitioner has challenged impugned order dated 16.12.2006, passed by Mobile Lok Adalat. One of the grounds of the petitioner is, that the matter could not have been referred for hearing by the Lok Adalat, without consent of the Insurance company. The petitioner Company which was the main affected party as it had provided insurance cover to the vehicle of opposite party no.2.

8. Thus under the provision of section 20(i) (a) & (b) of the Legal Services Authorities Act, 1987 (in short the Act) petitioner's company was the most interested party to be heard before a final order could be passed by

Mobile Lok Adalat. Further submission is that the matter could have been disposed of only after arriving at a settlement between the parties, in view of section 20(3) of the Act. Learned counsel further submits that it would appear from order dated 22.3.2006 of Chief Judicial Magistrate, Gaya that by mistake he had accepted the Final Form, which was filed, and as such directed the police to submit suppl. Final Form. Furthermore, in view of the order of the revisional court, the Chief Judicial Magistrate, Gaya was bound to dispose of the matter only after hearing the parties, which would include the petitioner as order in revision was passed on its application.

9. Learned counsel for respondent no.2 submits that the Chief Judicial Magistrate, Gaya has no jurisdiction to recall his order, however erroneous it may be and for this he relied upon section 362 CrPC and a decision rendered in cases of Sunita Jain Vs Pawan Kumar Jain and others and in case of Thakur Ram Vs The State of Bihar, reported in 2008(2) SCC 705 and 1966 SC 911, respectively. He further submits that the instant revision application is not maintainable at the instance of the petitioner, who is not aggrieved party as he is not the informant of the theft case, which had been lodged by the driver of respondent no.2.

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10. This court heard the submissions of both parties in detail. As opp party no.2 has raised the issue of maintainability of this writ petition, this Court takes up this issue as the first issue.

11. It is not in dispute that respondent no.2 had insurance cover of the petitioner's company, of his lost vehicle. Police after investigation submitted final form finding the case to be true, with no clue of accused or

the traceless vehicle. The necessary consequences of the aforesaid report, materially affects the petitioners company, as it would be liable to adequately compensate respondent no.2. In view of the aforesaid reason, the Company challenged the Final form before the sessions court, which was allowed vide order dated 13.1.2.2004. Respondent no.2 did not challenge the aforesaid order in the higher courts as such the same became final. The Chief Judicial Magistrate, Gaya, was bound by the direction of the revisional court to hear the parties before passing appropriate order on final form. It appears that the Chief Judicial Magistrate, accepted the Final form vide order dated 18.1.2006 without hearing the petitioner. The Chief Judicial Magistrate, Gaya realizing the mistake on the objection of the petitioner recalled the aforesaid order. Whether the Chief Judicial Magistrate, vide his order dated 23.2.2006 could would have recalled the order dated 18.1.2006 would be discussed later in the judgment. This court find that later on, the case was placed before the Mobile Lok Adalat, which only after hearing the driver of respondent no.2, accepted the Final form. The consequence of acceptance of F.I.R. materially affects the petitioner's company as burden of paying compensation falls squarely on it as a consequence. Besides this the aforesaid order was in teeth of decision dated 13.12.2004, passed in Cr Rev. No. 35 of 2004/52 of 2004.

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12. Thus this court is of the view that the petitioner's company was a necessary party, which ought to have been heard by the Mobile Lok Adalat, before disposing of the case in terms of order dated 16.12.2006.

13. In view of the aforesaid facts, the petitioner's company is

definitely an affected party and this writ petition is maintainable at its behest.

14. Other issue raised by respondent no.2 that the magistrate has no power to recall its own order, is not a very relevant issue for deciding whether the Mobile Lok Adalat could have disposed of the matter without consent or noticing the petitioner's company. There could not be any dispute in respect of the law laid down by the Apex court in the case reported in 2008(2) SCC 705, and 1966 SC 911, that a magistrate cannot recall or review its own order which is final in nature.

15. The main issue is whether the Mobile Lok Adalat would have disposed of the case without consent of petitioners company in view of section 20 of the Act.

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16. Before this court examine the issue, it would be necessary to rebut to the extent and scope of the Act in brief.

17. Chapter VI of the Act deals with Lok Adalats. Section 19 of the Act, relates to organization of Lok Adalats. It enumerates that every State Authority or District Authority or the Supreme Court Legal Services Committee or, every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee, may organize Lok Adalats . In the facts of the case, section 19(5) of the Act would assume relevancy, which states that the Lok Adalat will have jurisdiction to determine and to arrive at a compromise or settlement between the parties. The provision is wide enough to cover cases which are pending before any court or forum, or matter which may not have come before any court, but will fall within the

jurisdiction of any court for which Lok Adalat is organized. Section 20 of the Act relates to cognizance of cases by Lok Adalat when brought within its jurisdiction. It provides that any case pending before any court can be referred to Lok Adalat, on application of any of the parties, or both of the parties or it can be done even if any such court is prima facie satisfied that there is chance of settlement. However, the proviso mandates that no case can be referred to Lok Adalat without providing opportunity of hearing to the other side. Even in respect of matters which are not pending before any court, the same would be referred to Lok Adalat on an application of any of the affected parties, after providing opportunity of hearing to the other side.

18. Similarly, section 20(3) of the Act also mandates that once the case has been validly referred to Lok Adalat, it would proceed to dispose of the same by affording opportunity to all sides by mode of compromise or settlement. It would be relevant to quote section 20(3) of the Act which is as follows:-

> 20(3).- where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

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19. In the instant, case I find that the case was both referred to and disposed of by Lok Adalat, without affording opportunity of hearing to the petitioner's company, which was one of the most affected party as it was to indemnify and compensate the loss of theft of vehicle, as alleged in the FIR being Bodh Gaya PS Case No. 157 of 2000. It was not sufficient for the

Lok Adalat to hear the informant only, who was driver of respondent no.2. It is the Company who ultimately has to indemnify opp party no.2 for the loss on account of alleged theft of vehicle. The Lok Adalat ought to have heard the complaint also. It appears that the Lok Adalat was oblivious of the order of the Additional Sessions Judge, Gaya dated 13.12.2004, passed in Cr.Rev No. 35 of 2004/52 of 2004, whereby he had directed the Chief Judicial Magistrate, Gaya to dispose of the matter after hearing the parties including the petitioner's company.

20. The Hon'ble Apex court in the case of State of Punjab and anr Vs. Jalour Singh and others, reported in 2008 AIR SCW 1196 observed that the Lok Adalats have no adjudicatory or judicial functions and it could dispose of the matter only by way of compromise or settlement after noticing the parties. The Apex court further observed that the function of Lok Adalat is purely conciliatory in nature and award of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat. It was further observed that any award, in absence of any settlement is not an award in terms of the provisions of the Legal Service Authorities Act.

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21. In view of the aforesaid binding pronouncement of Hon'ble Apex court, order dated 18.12.2006, passed by Mobile Lok Adalat, disposing of the case, much less without the consent of the petitioner's company is in

teeth of section 20(3) of the Act, and as such the same is set aside and the case is remitted to the file of learned Chief Judicial Magistrate, Gaya to proceed in accordance with law. It would be open to the parties to have the matter referred to Lok Adalat which would determine the same by way of compromise or settlement after hearing the parties.

A.F.R.
Shashi. (Samarendra Pratap Singh,J.).

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